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EXAMINER

CHO, D

ART UNIT

PAPER NUMBER

12

3308

DATE MAILED:

03/28/96

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LARRY L HUSTON  
THE PROCTER & GAMBLE COMPANY  
WINTON HILL TECHNICAL CENTER  
6100 CENTER HILL AVENUE  
CINCINNATI OH 45224

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 1/31/95 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), — days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☒ Notice of References Cited by Examiner, PTO-892.
- ☐ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☒ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐

Part II SUMMARY OF ACTION

- ☒ Claims 1, 4-10, 12-17, 19 are pending in the application.  
Of the above, claims — are withdrawn from consideration.
- ☒ Claims 2-3, 11, 18 have been cancelled.
- ☐ Claims — are allowed.
- ☒ Claims 1, 4-10, 12-17, 19 are rejected.
- ☐ Claims — are objected to.
- ☐ Claims — are subject to restriction or election requirement.
- ☐ This application has been filed with Informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
- ☐ Formal drawings are required in response to this Office action.
- ☐ The corrected or substitute drawings have been received on —. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
- ☐ The proposed additional or substitute sheet(s) of drawings, filed on —, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
- ☐ The proposed drawing correction, filed —, has been ☐ approved; ☐ disapproved (see explanation).
- ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. —; filed on —.
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
- ☐ Other

EXAMINER'S ACTION

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### **Part III DETAILED ACTION**

#### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR § 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claims 12 and 15 must be shown or the feature cancelled from the claim, i.e.- no flaps or adhesives shown. No new matter should be entered.

#### ***Claim Rejections - 35 USC § 112***

2. Claims 9-15, 17 rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 has a grammatical error on line 3, "a said transverse".

In regards to claim 10, Applicant refers to third and fourth lines of weakness. However, first and second lines of weakness have not been claimed. In regard to claims 11 and 15, positive antecedent basis for "the garment" and "the undergarment" should be defined. In regard to claims 8 and 17, again Applicant refers to second and/or third discontinuous lines, however, a first "discontinuous" line has not been claimed. Furthermore, claim 17 lacks proper claim dependency.

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*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

4. Claims 1, 4-10, 16-17, 19 are rejected under 35 U.S.C. § 103 as being unpatentable over Buell '5,197,959 in view of Glassman '4,758,240 and Sneller 'WO 93/12747.

In regards to claims 1, 4-8, 10 and 16-17, the Buell device includes all the claimed structure except for the core having a line or lines of weakness. However, see figure 6, 23b and 23c, figure 28, col. 6, lines 23-24, col. 8, lines 5-32, col. 13, lines 8-28, col. 16, lines 44-53, col. 17, lines 15-19, col. 18, lines 20-30 and 51-61, col. 26, lines 59-66. Sneller, paragraph bridging pages 18 and 19 and Glassman, see, e.g. abstract and col. 5,

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lines 6-11 teaches channels or interchangeable spot depression, i.e.- discrete sites to create a weakened area that permit lateral or accordion like compression of the pad when worn, see col. 4, lines 54-59. To employ lines of weakness, i.e.- discrete site, as taught by Sneller and Glassman on the Buell device would be obvious to one of ordinary skill in the art in view of the recognition that such a feature would enhance the mimicking of the configurations of the deformation element by the core, i.e.- controlled bunching, and the desirability of such on the Buell device. In regard to the claim limitation of the discrete sites being bilaterally staggered about the line of weakness, to employ discrete sites bilaterally staggered as taught by Glassman would be obvious to one of ordinary skill in the art in view of the recognition that such would further increase the compressibility of the napkin, as disclosed on column 5, lines 38-42 and figure 3.

In regards to claim 9, Applicant claims V-shaped lines of weakness. However, on page 13, lines 13-17, Applicant does not disclose the criticality thereof. See *In re Cole*, 140 USPQ 230, *In re Kuhle*, 188 USPQ 7. Therefore, it would have been obvious matter of design choice to modify the Buell device by having V-shaped lines of weakness since it has not been disclosed that having such lines of weakness solves any stated problem or is for any particular purpose and it appears that the core would perform equally well, see e.g., figures 14, 18, 19.

In regard to claim 19, see col. 8, lines 8-17, and 20-24, i.e. the inner perimeter region does not have to correspond to the protuberance 71, i.e. lines of weakness 23c.

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Applicant claims discrete sites joining the topsheet and core and having a lesser density than the discrete sites forming the lines of weakness. However, Glassman shows continuous lines and lines formed by discrete spots are interchangeable. Furthermore, Applicant does not disclose the criticality of lower density sites on page 10, lines 19-20. See case law citation, *supra*. To make continuous region 47 of Buell discrete sites instead would be obvious of one of ordinary skill in the art in view of the interchangeability as taught by Glassman.

Furthermore, it would have been obvious matter of design choice to modify the Buell device by having lower density sites since it has not been disclosed that having such density solves any stated problem or is for any particular purpose and it appears that the core would perform equally well.

5. Claims 12-15 are rejected under 35 U.S.C. § 103 as being unpatentable over Buell in view of Glassman and Sneller as applied to claim 11 above, and further in view of McNair '4,285,343.

See cited portions of Buell, Glassman, and Sneller, and also see, e.g., col. 21, line 31-col. 22, line 24. Also, see col. 1, lines 13-19 and 35-42, figure 3 and col. 3, lines 32-43 of McNair. To employ flaps as taught by McNair on the Buell device would be obvious to one of ordinary skill in the art in view of the recognition that such would permit the absorbent pad to remain in contact with the wearer, further prevent movement from the desired location and allows more complete absorption of fluids preventing staining and the desirability of contact, maintenance of position and complete absorption on Buell. It should

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be noted that Applicant does not claim how the sides of the backsheet and flaps relate to the longitudinal side margins, i.e. Applicant does not claim the side edges of the backsheet define the longitudinal edges of the sanitary napkin. Since the flaps are part of the napkin and the free ends form part of the longitudinal edges, the flaps are joined at the opposite ends to backsheet inboard of the longitudinal side edges of the napkins, i.e. free ends as claimed. Also, Applicant should note lack of criticality of point of joining in the instant disclosure at page 8, lines 15-17.

It is noted that the after final amendment dated 12/12/94 has not been entered in the earlier application and was not entered in the continuation.

6. This is a Continuation of applicant's earlier application S.N. 08/122,114. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds or art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See M.P.E.P. § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

**A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL**


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EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Cho whose telephone number is (703) 308-0073.

  
DAVID H. WILLSE  
PRIMARY EXAMINER  
GROUP 3300

dj cho

  
assistant examiner

March 25, 1996